

**BOARD OF COUNTY COMMISSIONERS
WASHOE COUNTY, NEVADA**

TUESDAY

10:00 A.M.

AUGUST 23, 2016

PRESENT:

Kitty Jung, Chair
Bob Lucey, Vice Chair
Marsha Berkgigler, Commissioner
Vaughn Hartung, Commissioner
Jeanne Herman, Commissioner

Nancy Parent, County Clerk
Kevin Schiller, Assistant County Manager
Paul Lipparelli, Legal Counsel

The Washoe County Board of Commissioners convened at 10:00 a.m. in regular session in the Commission Chambers of the Washoe County Administration Complex, 1001 East Ninth Street, Reno, Nevada. Following the Pledge of Allegiance to the flag of our Country, the Clerk called the roll and the Board conducted the following business:

16-0730 AGENDA ITEM 3 Public Comment.

Cathy Brandhorst spoke about matters of concern to herself.

Elise Weatherly spoke about the need to increase grandparents' rights in the lives of children. She asked the Board to look at the historical evidence which supported the benefits of Pastor Marvin Neal's ministry and to allow the ministry to return to the Jan Evans Juvenile Justice Center.

Garth Elliott said he was up for re-election to the Sun Valley General Improvement District Board of Trustees. He stated he recently assisted a Vietnam War veteran who had suffered a heart-attack. The veteran was residing in a parked vehicle near his residence. He noted the system for veterans, the downtrodden and the elderly was broken. He added the Board, as people who made decisions affecting the system, needed to improve the lives of those individuals. He expressed his concerns regarding the County's new Sign Code which he felt was business unfriendly.

Tim Stoffel stated the County was becoming increasingly animal unfriendly. He remarked Agenda Item 18 was scheduled at an awkward time. He said the Animal Services Advisory Board was made up of government officials and those who represented the interest of animal rights' groups. He added the Animal Services Advisory Board lacked individuals on the opposing side, which resulted in regulation without representation.

Gary Martin complained about the numerous amounts of bicyclists who disobeyed traffic laws and urinated along the side of the road while riding through Verdi. He mentioned he had contacted the Sheriff's Office over the years; however, the only entity that had assisted with the issue was the Nevada Highway Patrol. He said he spoke with the Regional Transportation Commission about the number of available facilities for the bicyclists along the bike route from Pyramid Lake to Lake Tahoe, and he received no answers. He mentioned Verdi residents submitted paperwork to the County requesting either speed bumps or "No Bicycles" signs to be installed.

Ardena Perry spoke in opposition to the Animal Services Advisory Board and stated it was reflective of the County's overarching authority. She remarked she spoke with three members of the Sparks City Council who did not know anything about their appointments to the Animal Services Advisory Board. She added the County could not create a policy that was in direct contradiction to the Interlocal contract with the City of Sparks and that the County needed to understand its boundaries.

Sam Dehne commented the media did not report his ideas and that he was living proof the voting system in the City of Reno was rigged since he was not sitting on the dais. He expressed his concerns about the City of Reno's proposal to provide free parking to people who had a City of Reno specialty license plate. He spoke about free parking for military veterans.

16-0731 AGENDA ITEM 4 Announcements/Reports.

Commissioner Berkbigler stated an apartment complex for veterans had opened up in the City of Reno. She suggested people send homeless veterans to the facility to apply for housing.

Commissioner Hartung requested an update from Dave Solaro, Community Services Department Director, and Dwayne Smith, Engineering and Capital Projects Director, regarding the traffic issues on Nicole Drive. Residents wanted to see the road blocked off to prevent the road from being a bypass for Eagle Canyon Road.

Commissioner Herman reported there would be a hearing at the Nevada State Legislature on August 26th regarding water rights. The Legislature was going to consider changing the water rights on every well from two acre-feet to a half acre-foot. She indicated she had not received an update on Monte Cristo residents' ability to utilize their properties. She noted Gary Martin had an interesting idea regarding bicyclists. She suggested speaking to the Sheriff's Office about providing a class for bicyclists since some of them probably did not know the rules.

Commissioner Hartung stated an ideal position would be to ask the Sheriff's Office to police the roads in Verdi and to start ticketing bicyclists.

CONSENT ITEMS 5A THROUGH 5L2

- 16-0732** **5A** Approve to retroactively acknowledge a Specialty Court General Fund Allocation from the Judicial Council of the State of Nevada to the Sparks Justice Court [\$45,050 for FY17, no match required], paid in quarterly installments retroactive to July 2016, grant end date June 30, 2017; and direct the Comptroller to make the appropriate budget adjustments. Sparks Justice Court. (Commission Districts 3, 4 & 5.)
- 16-0733** **5B** The 911 Emergency Response Advisory Committee recommends that the Board of County Commissioners approve the expenditure to replace the three (3) Harris Dailey-Wells Symphony Dispatch Radio Consoles currently in use at the Sparks Police Department Public Safety Answering Point (PSAP) dispatch center at a cost not to exceed [\$127,315.05]. Technology Services. (All Commission Districts.)
- 16-0734** **5C** Approve amendments totaling an increase of [\$1,196.30] in both revenue and expense to the FY17 Fetal Infant Mortality Review (FIMR) Program IO 11176; and if approved, direct the Comptroller's office to make the appropriate budget amendments. Health. (All Commission Districts.)
- 16-0735** **5D** Approve the Interlocal Agreement for Maintenance and Operations of the Nevada SR-28 Shared Use Path and Associated Parking Facilities between the State of Nevada, acting by and through its Department of Transportation and Washoe County. Community Services. (Commission District 1.)
- 16-0736** **5E** Approve roll change requests, pursuant to NRS 361.765 and/or NRS 361.768, for errors discovered for the 2013/2014, 2014/2015, 2015/2016 secured tax roll and authorize Chair to execute the changes described in Exhibit A and direct the Washoe County Treasurer to correct the error(s). [cumulative amount of decrease to all taxing entities \$1,927.95]. Assessor. (Parcels are in Commission Districts 2 & 3.)
- 16-0737** **5F** Approve a 32-day extension of existing Collective Bargaining Agreements beyond the current August 29, 2016 expiration date to September 30, 2016 as it affects NRS 288. Human Resources. (All Commission Districts.)
- 16-0738** **5G** Acknowledge and approve assignment of the correct Ordinance Number of 1584 for Bill No. 1768, adopted on August 9, 2016 amending Washoe County Code Chapter 110 (Development Code) to clarify when an accessory structure or use may be constructed on a parcel without an existing main structure or an existing principal use. The amendment focuses on circumstances where the subject parcel is adjacent to a parcel

with an existing main structure or principal use and when both parcels are under the same ownership. Clerk. (All Commission Districts.)

- 16-0739** **5H** Approve expenditures for the August 25, 2016 Employee Family Picnic in an amount [not to exceed \$10,000.00]. Manager. (All Commission Districts.)
- 16-0740** **5I1** Approve to accept a Victim of Crime Act (VOCA) grant to the District Attorney's Office in the amount of [\$50,000, \$12,500 required match], from the State Division of Child and Family Services (DCFS) to provide counseling services at the Washoe County Child Advocacy Center and supplies related to the program; retroactive from July 1, 2016 through June 30, 2017. Direct the Comptroller to make the necessary budget amendments. (All commission Districts.)
- 16-0741** **5I2** Approve to accept a Violence Against Women Act (VAWA) grant to the District Attorney's Office in the amount of[\$30,000, \$10,000 required match], from the Nevada Office of Attorney General (AG) to provide counseling services at the Washoe County Child Advocacy Center; retroactive from July 1, 2016 through June 30, 2017. Direct the Comptroller to make the necessary budget amendments. (All commission Districts.)
- 16-0742** **5J1** Approve to acknowledge Receipt of Status Report of Commissary Fund submitted by the Washoe County Sheriff's Office Commissary Committee for Fourth Quarter of Fiscal Year 15/16. (All Commission Districts.)
- 16-0743** **5J2** Approve the Interlocal Agreement Extraditions between County of Washoe on behalf of the Washoe County Sheriff's Office and the City of Sparks on behalf of the Sparks Police Department in an amount not to exceed [\$30,000] to be paid to the Washoe County Sheriff's Office Consolidated Extraditions Unit for the processing of extraditions and transportation of prisoners for the Sparks Police Department, for the period of the date of execution to June 30, 2017. (All Commission Districts.)
- 16-0744** **5K1** Approve a professional services agreement with The Children's Cabinet, Inc. for remaining grant term, retroactive to July 1, 2016 through September 30, 2016. The proposed agreement is paid through a grant from the Federal Administration for Children and Families for the Permanency Innovations Initiative (PII) Program to prevent long-term foster care and to provide case management services. Social Services. (All Commission Districts.)

- 16-0745** **5K2** Accept a Sub-Grant Award from the State of Nevada Division of Public and Behavioral Health, Behavioral Health, Prevention and Treatment (BHPT) in the amount of [\$47,020] no match required, to provide Mental Health Support for Seniors upon approval September 1, 2016 through September 30, 2017, authorize the Department to execute the Sub-Grant Award and direct the Comptroller's Office to make the necessary budget amendments. (All Commission Districts.)
- 16-0746** **5K3** Accept a Sub-grant Award from the State of Nevada Department of Health and Human Services, Division of Public & Behavioral Health upon approval by all parties through June 30, 2017 for [\$70,000.00], no County match required, to provide substance abuse treatment services to clients referred by the county Social Services Department. Authorize the Department to execute the Sub-grant Award and direct the Comptroller's Office to make the necessary budget amendments. (All Commission Districts.)
- 16-0747** **5L1** Recommendation to establish one additional, two hundred dollar [\$200.00] change fund, bringing the total of funds assigned six hundred dollars [\$600.00], to enable Washoe County Alternative Sentencing to accept cash payments for the Sober 24 program drug and alcohol testing at 1530 E. 6th Street, Reno; and if approved, authorize the Chairman to execute Resolution for same. No fiscal impact. (All Commission Districts.)
- 16-0748** **5L2** Approve an Interlocal Depository Agreement between Washoe County and the Nevada State Treasurer for the investment of funds in the Local Government Pooled Investment Fund [no fiscal impact]; and if approved, authorize Chairman to execute and Washoe County Treasurer to serve as administrator of Agreement. (All Commission Districts.)

On the call for public comment, Cathy Brandhorst spoke about matters of concern to herself.

Elise Weatherly spoke in favor of Consent Agenda Items 5I1 and 5I2. She mentioned she had family members who had been victims of crime and needed counseling. She questioned who would determine who was going to provide the counseling services.

On motion by Commissioner Hartung, seconded by Commissioner Berkgigler, which motion duly carried, it was ordered that Consent Agenda Items 5A through 5L2 be approved. Any and all Resolutions or Interlocal Agreements pertinent to Consent Agenda Items 5A through 5L2 are attached hereto and made a part of the minutes thereof.

BLOCK VOTE – AGENDA ITEMS 7, 8, 9, 11, 12 and 13

16-0749 **AGENDA ITEM 7** Recommendation to approve the Agreement for Consulting Engineering Services between Washoe County and CDM Smith, 111 Academy Way, Suite 150, Irvine, CA 92617, for the “Phase 3 Packed Tower Aerators Equipment Analysis Process Optimization and O&M Manuals Update” Project in the amount of[\$154,999]. Community Services. (Commission District 3.)

On the call for public comment, Cathy Brandhorst spoke about matters of concern to herself.

On motion by Commissioner Lucey, seconded by Commissioner Berkbigler, which motion duly carried, it was ordered that Agenda Item 7 be approved.

16-0750 **AGENDA ITEM 8** Recommendation to award a bid and approve the Agreement to the lowest responsive, responsible bidder for the Longley Stressed Membrane Structure Project, [staff recommends Bison Construction, in the amount of \$498,900.00]. Community Services. (Commission District 2.)

On the call for public comment, David Renard, Sprung Instant Structures, Inc. Business Development Manager, said his company had teamed up with Bison Construction during competitive bidding; however, they were not included in Bison Construction’s final bid. He expressed his concerns with the use of hollow tube structures since those structures had been known to pit from the inside out causing lapses in structural integrity. He mentioned the collapse of the Dallas Cowboys practice stadium which utilized the hollow tube system. The collapse caused the manufacturer of the hollow tube system to go out of business. He explained how the engineering and construction of Sprung Instant Structures’ membrane ensured a longer life. He asked the Board to question where the hollow tube structure came from, who manufactured it, and whether the manufacturer’s engineering was assigned a risk category two. He added Sprung Instant Structure’s solution was approximately \$60,000 to \$70,000 more.

On motion by Commissioner Lucey, seconded by Commissioner Berkbigler, which motion duly carried, it was ordered that Agenda Item 8 be awarded and approved.

16-0751 **AGENDA ITEM 9** Recommendation to award a bid and approve the Agreement to the lowest responsive, responsible bidder for the Utility Operations Maintenance Building Grading, Foundation and Improvements Package Project, [staff recommends Reyman Brothers Construction, in the amount of \$409,000]. Community Services. (Commission District 2.)

On the call for public comment, Cathy Brandhorst spoke about matters of concern to herself.

On motion by Commissioner Lucey, seconded by Commissioner Berkgigler, which motion duly carried, it was ordered that Agenda Item 9 be awarded and approved.

16-0752 **AGENDA ITEM 11** Recommendation to accept a grant in the amount of [\$250,000 no County match], from the Fund to Assist Former Foster Youth (FAFFY), the State Independent Living Grant from the State Division of Child and Family Services (DCFS) to assist youth in making the transition from foster care to economic self-sufficiency, retroactively to July 1, 2016 through June 30, 2017 as the award was received and processed in June 2016, and if accepted, authorize the Department of Social Services to expend the grant revenue and direct the Comptroller's Office to make the appropriate budget adjustments. Social Services. (All Commission Districts.)

On the call for public comment, Cathy Brandhorst spoke about matters of concern to herself.

On motion by Commissioner Lucey, seconded by Commissioner Berkgigler, which motion duly carried, it was ordered that Agenda Item 11 be accepted, authorized and directed.

16-0753 **AGENDA ITEM 12** Recommendation to request the Board of County Commissioners to acknowledge the Professional Services Agreement for behavioral health and case management services for Adult Drug Court between the Second Judicial District Court and Bristlecone Family Resources,[in the amount of \$445,732], retroactive from the period August 1, 2016 through June 30, 2017. District Court. (All Commission Districts.)

On motion by Commissioner Lucey, seconded by Commissioner Berkgigler, which motion duly carried, it was ordered that Agenda Item 12 be acknowledged.

16-0754 **AGENDA ITEM 13** Recommendation to accept a Sub-grant Award from the State of Nevada Division of Child and Family Services (DCFS) in the amount of [\$206,835.00] (no County match required) from October 1, 2016 through September 30, 2017, to assist the Department of Social Services with the Adoption Incentive program. Authorize the Department to execute the Sub-Grant Award and direct the Comptroller's Office to make the necessary budget amendments. Social Services. (All Commission Districts.)

On motion by Commissioner Lucey, seconded by Commissioner Berkbigler, which motion duly carried, it was ordered that Agenda Item 13 be accepted, authorized and directed.

16-0755 **AGENDA ITEM 6** Appearance: Carina A. Black, Ph.D., Executive Director, Northern Nevada International Center. Presentation and update on the Northern Nevada International Center's Refugee program.

Carina A. Black, Ph.D., Northern Nevada International Center (NNIC) Executive Director, conducted a PowerPoint presentation. The headings of the slides were as follows: 1) The Global Displacement Crisis and Northern Nevada. 2) Top Ten Resettlement Countries. 3) U.S. Refugee Admissions Program. 4) Top Nationalities Since 2010. 5) FY2015 Reception and Placement Program Affiliate Sites. 6) Arrivals by State. 7) Reception and Placement Program. 8) R&P Per Capita Funding. 9) Refugee Resettlement in Northern Nevada. 10) Example of LDS Sponsorship of First Refugee Family. 11) Questions. Two additional slides displayed refugee statistics and the names of other organizations with refugee programs. Additional handouts were provided to the Board and placed on file with the Clerk.

Dr. Black highlighted that at no time since World War II had there been more displaced people.

On the call for public comment, Diane Bartholomew said she assisted Dr. Black by coordinating volunteer opportunities utilizing the website JustServe.org. She praised the community's work with refugees.

Garth Elliott stated the refugee program was a travesty. He noted refugees were receiving three and half times more funding than military veterans. He mentioned there were paramilitary Muslims in Iraq who were attempting to enter into the United States. He expressed his concern with the vetting process for refugees.

Sam Dehne said he fought to keep enemies of the United States outside of the country's borders. He expressed his concerns with giving money to foreigners while military veterans in the United States were suffering.

Pamela Kellerstrass, Advanced Supply Chain Logistics Chief Financial Officer, stated she also served as the Church of Jesus Christ of Latter-day Saints (LDS) Assistant Public Affairs Director. She spoke about meeting Dr. Black through the Nevada Clergy Association. She remarked the LDS had an initiative called I Was a Stranger which also supported the refugee cause. She stated the LDS was impressed with the NNIC's interest regarding the sustainability of settling refugees and how the NNIC aligned itself with non-governmental organizations regarding a comprehensive vetting process. She spoke about helping the two Congolese families who were coming to Reno. She added refugees who came into the community would assimilate.

Mike Thornton, Acting in Community Together in Organizing Northern Nevada (ACTIONN) Executive Director, said presenting the refugee program as devaluing or taking away from the nation's veterans or other people in need was the wrong way to look at it. He noted the NNIC and Dr. Black had excellent reputations in the community. ACTIONN was very pleased to work on garnering support for the refugee effort. He added ACTIONN had been in existence since 2009. He stated there was a tremendous amount of support in the faith and non-faith communities for the refugee program. He hoped the Board would see their effort as important and support it.

Elise Weatherly spoke about illegal immigrants who had been good employees and positive members of society. She questioned the intentions of individuals entering the United States and who would evaluate them.

Pamela Milligan stated she represented county governments in California from 1986 to 2003. She said she and her husband retired to Reno after long military careers. She noted the positive quality of life the Board's policies had created. She spoke about the security background checks refugees had to go through. She added there was no data which suggested refugees created a security risk in this country. Refugees contributed to the rich diversity of the country. She said the \$2,000 each refugee received was a fraction of the amount given to veterans, and that the program was not about rivaling refugees against America's poor or veterans.

Commissioner Hartung spoke of his own family's immigration to the United States. He stated the issue people had was that the process was done in a vacuum. It was not a question of whether the United States was being generous. The issue was about budgets and the cost of having people come into the community.

Commissioner Berkbigler stated it was important to remember the County had no control over the refugee issue. She added having refugees come into the area would impact the County's budget and social services programs. She concluded she would rather have resettled refugees than illegal immigrants coming into the country.

Chair Jung said she would much rather live in a country that people were dying to get into than dying to get out of. She stated the nation was rich and wealthy because of its diversity. She offered her assistance to Dr. Black. She mentioned the Nevada's Women's Lobby and the Democratic Women of Washoe County were working on adopting a family. She also mentioned she spoke with the Northern Nevada Muslim Community and asked them to be engaged with the families coming from Muslim countries.

There was no action taken on this item.

16-0756 **AGENDA ITEM 10** Recommendation to approve conditional Water Right Application 86233 to the Nevada State Engineer, proposing to export 7000 acre-feet of ground water from Mud Meadows hydrographic basin in northern Pershing County to Lyon, Storey and Washoe Counties

for use at the Tahoe Reno Industrial Park, with the State Engineer approval to be conditioned upon review of more current hydro-geologic analysis of estimated available perennial yield within this basin. Community Services. (Commission District 4.)

Commissioner Berkbigler stated she received an email from Susan Lynn, Great Basin Water Network Board member, indicating opposition to the water transfer by Pershing County, Humboldt County, Churchill County, the Humboldt River Authority, the Summit Lake Paiute Tribe and the Bureau of Land Management (BLM). She noted the water was not running through Washoe County and she inquired why Washoe County was being asked to participate.

Dave Solaro, Community Services Department Director, replied the County was one of the locations the basin touched; therefore, the County was being notified by the State Engineer about the request. He indicated on a map a small section between Interstate 80 and the Truckee River where the basin entered the County. The map was placed on file with the Clerk. He noted the data the State Engineer utilized to determine the perennial yield within the hydrographic basin was 30 years old. He said staff believed more studies were needed to determine whether there was enough perennial yield within the basin. He added there was a list of a lot of different counties, corporations and ranches that opposed the transfer of water.

Commissioner Berkbigler inquired whether the Board was being asked for conditional approval that further studies be performed before an ultimate decision was made.

Mr. Solaro replied she was correct.

Commissioner Herman said she was against most water transfers from one basin to another. She stated she would have to vote against it if the vote were to occur.

Commissioner Hartung asked if the 30 year old report determined whether there was a sustainable yield. He mentioned the stress testing of aquifers and the over-allocation of water statewide to various basins.

Mr. Solaro replied the 30 year old report indicated the annual perennial yield was around 13,000 acre-feet. There was a little less than 6,000 acre-feet already appropriated and the request was for an additional 7,000 acre-feet to be appropriated for municipal use. He noted staff's recommendation was to obtain updated information to verify the available perennial yield before the water transfer was approved.

Commissioner Hartung stated he was not in favor of moving water around all over the state to satisfy the needs of growing areas.

Chair Jung inquired whether the Board could add a condition to also seek approval from the Pyramid Lake Paiute Tribe.

Vahid Behmaram, Community Services Department Water Management Planner Coordinator, remarked the County's recommendation to the State Engineer was not binding. The recommendation was for informational purposes. He said staff could add the condition in the form of a letter to the State Engineer's Office. He noted the issue had gone through statutory publication and it did receive protests from the BLM and the Sierra Club in Pershing County.

Chair Jung moved to approve the item conditional upon a review of the hydro-geologic analysis and also conditional upon the Pyramid Lake Paiute Tribe's approval.

On the call for public comment, Cathy Brandhorst spoke about matters of concern to herself.

Garth Elliott spoke about Friends of the Black Rock, which he and Susan Lynn created 20 years ago. He said Friends of the Black Rock conserved and protected the valuable resources of the Black Rock Desert. He mentioned Mud Meadows was in the northern most part of the Black Rock Desert and that there was not 7,000 acre-feet of water there to transfer. He added no one was in favor of the water transfer except for the developer.

Sam Dehne spoke about how nobody thought about the water when they built the Tahoe Reno Industrial Center. He expressed his concerns about importing water.

Commissioner Berkbigler sought clarification of Chair Jung's motion. She inquired whether Chair Jung was requesting staff to ensure the issue was brought before the Pyramid Lake Paiute Tribe for approval, and once the study was completed, provide a report to the Board.

Chair Jung replied yes and asked Commissioner Berkbigler if she agreed.

Commissioner Berkbigler agreed. She said she wanted to make sure the issue came back before the Board after the Pyramid Lake Paiute Tribe had their say and once the study was completed.

Chair Jung concurred with Commissioner Berkbigler's comments.

Mr. Solaro clarified that staff was being asked by the State Engineer to provide an advisory comment which would be a request for updated information regarding the perennial yield of the basin; as well as, to gain approval from the Pyramid Lake Paiute Tribe. He added the item would not come back before the Board for action since it was only informational.

Chair Jung stated Commissioner Berkbigler wanted a report on the final outcome.

Mr. Solaro acknowledged the request and indicated a report would be provided to the Board.

Commissioner Berkgigler added the only item she was interested in was the report.

Mr. Behmaram stated the hearing and studies for this issue may take several years. He mentioned the process was very convoluted and complicated. He said the County was simply being notified as a courtesy by the State Engineer's Office.

On motion by Commissioner Jung, seconded by Commissioner Berkgigler, which motion duly carried with Commissioner Herman voting "no", it was ordered that Agenda Item 10 be approved with the condition of gaining approval from the Pyramid Lake Paiute Tribe and with the presentation of a report to update the Board.

16-0757 **AGENDA ITEM 14** Recommendation to appoint three of nine individuals to fill three vacancies on the Washoe County Advisory Board to Manage Wildlife with terms effective August 23, 2016 through June 30, 2019. Manager. (All Commission Districts.)

Commissioner Hartung asked which three names Commissioner Lucey called out.

Commissioner Lucey said he recommended Arnold Pitts, Meghan Di Rocco and Steven Robinson to the Board.

Commissioner Hartung stated he requested to have Jim Rhea as a representative.

Chair Jung inquired whether the appointees were identified by district.

Al Rogers, Management Services Director, remarked there was not a requirement that there be specific individuals from each district. The Advisory Board was made up of five representatives and there were three openings. He noted the criteria for the Advisory Board was in the staff report.

Chair Jung asked which two districts were currently being represented.

Mr. Rogers named the current members but indicated he was not sure which districts they represented.

Commissioner Lucey thought each Commissioner should state their suggestions to be as transparent as possible.

Paul Lipparelli, Legal Counsel, remarked the Board could use whatever process they thought was fair as long as it was completed in open session.

Commissioner Lucey recommended each Commissioner put forward three individuals for the positions.

Commissioner Herman stated her choices of Kristie Belding, Ray Kabisch, and Christy Prentice.

Commissioner Hartung stated his choices of Kristie Belding, Jim Rhea and Chris Syverson.

Commissioner Lucey stated his choices of Arnold Pitts, Meghan Di Rocco and Steven Robinson.

Commissioner Berkbigler stated her choices of Arnold Pitts, Steven Robinson, and Ray Kabisch. She added she was flexible on the appointments because she did not know these people really well.

Chair Jung remarked she was the deciding vote. She stated her choices of Arnold Pitts, Meghan Di Rocco and Steven Robinson. She indicated her votes gave each of them each three votes.

On the call for public comment, Rex Flowers spoke of his experience with the Advisory Board to Manage Wildlife. He said the Board should want to appoint people who had been involved with and attended the Advisory Board meetings. He named Kristie Belding, Ray Kabisch, and Chris Syverson as individuals who met the criteria he set forth.

Chris Syverson asked for the Board's endorsement to the Advisory Board. She spoke about her experience and noted this was the second time she had applied to be on the Advisory Board. She added she had attended the Advisory Board meetings to gain further understanding of the issues. She said she would be fair.

On motion by Commissioner Lucey, seconded by Commissioner Berkbigler, which motion duly carried with Commissioner Hartung voting "no", it was ordered that Arnold Pitts, Meghan Di Rocco, and Steven Robinson be appointed to fill three vacancies on the Washoe County Advisory Board to Manage Wildlife with terms effective August 23, 2016 through June 30, 2019.

16-0758 **AGENDA ITEM 17** Hearing, discussion, and possible action on Appeal Case Number AX16-004, appealing the denial by the Washoe County Board of Adjustment of Variance Case Number VA16-003 (Fleming Front Yard Setback Reduction) which sought a variance pursuant to Article 804 of the Washoe County Development Code to allow the reduction in the front yard setback from 15 feet to approximately 10 feet and 13/16 inches,

to facilitate the expansion of the existing dwelling. The Board of County Commissioners may take action to confirm the Board of Adjustment's denial; or reverse the Board of Adjustment's denial and issue the Variance with Conditions of Approval. The Applicant's representative is Elise Fett and Associates Attn: Julie Rinaldo PO Box 5989 Incline Village, NV 89450. The property owners are Thomas and Susan Fleming. The property's location is 715 Cristina Drive, approximately 750 feet southeast of its intersection with Eagle Drive, in Incline Village NV (APN 126-251-06). Parcel Size is ± .363 acres with a Master Plan Category of Suburban Residential (SR) and a Regulatory Zone of Medium Density Suburban (MDS). The property is in the Tahoe Area Plan of the Washoe County Master Plan. Community Services. (Commission District 1.)

Commissioner Berkbigler sought clarification as to whether the applicant's request to build a garage would result in a car, which would be parked in front of the garage, to sit out into the roadway.

Roger Pelham, Community Services Department Senior Planner, replied that was the concern expressed by the County Traffic Engineer, Clara Lawson, during her review of the reduction request.

Commissioner Berkbigler asked the applicant to step forward.

Thomas Fleming stated there would be enough room between the proposed garage door and the roadway for a parked car. He mentioned there were two mature trees at either end of the parking area that stuck out further than a parked car would.

Commissioner Berkbigler said she looked at the map and it did not appear to her there would be an issue.

Thomas Fleming added the road report he saw indicated no concerns.

Elise Fett, who represented the applicant's interest, stated Kimble Corbridge, Assistant Public Works Director, had no issue with the request. She referred to a diagram of the property and described the dimensions. She said the proposal was to leave the driveway as it existed and allow over two-thirds of the property for snow storage which would leave 18 feet from the front of the proposed garage to the edge of the pavement.

Commissioner Berkbigler mentioned the issue went before a Citizen Advisory Board (CAB) and the CAB did not see any problems. She added the chosen site for garage was the only reasonable location, there were no complaints by the neighbors, and the extension was consistent with the Lake Tahoe area plan. She moved to overrule the Board of Adjustment's decision.

Commissioner Hartung seconded the motion.

After the initial motion, Mr. Pelham stated he had a set of standard Lake Tahoe conditions of approval he could provide to the Board and the applicant. The conditions of approval were placed on file with the Clerk. He noted the standard conditions would require the building permit to be in substantial conformance with the approved plans, there to be a two year time period, the final action order to the plans to be attached, an executed hold harmless for the road maintenance and snow removal, an automatic garage door opener to be installed, the front property lines to be surveyed, and the prohibition of the use of straw bales and fabric fencing.

Chair Jung asked if Commissioner Berkbigler agreed with the conditions.

Commissioner Berkbigler replied “absolutely” as those were the standard for Lake Tahoe.

On the call for public comment, Cathy Brandhorst spoke about matters of concern to herself.

On motion by Commissioner Berkbigler, seconded by Commissioner Hartung, which motion duly carried, it was ordered that the Board of Adjustment’s denial be reversed and to approve the variance with the standard conditions.

11:56 a.m. The Board recessed.

3:30 p.m. The Board reconvened with all members present.

16-0759 **AGENDA ITEM 15** Update, discussion and possible direction to staff regarding 2017 Nevada Legislative Interim Committees and Studies, legislation or legislative issues proposed by legislators, by Washoe County or by other entities permitted by the Nevada State Legislature to submit bill draft requests, or such legislative issues as may be deemed by the Chair or the Board to be of critical significance to Washoe County. Manager. (All Commission Districts.)

Liane Lee, Government Affairs Manager, conducted a PowerPoint presentation. The headings of the slides were as follows: 1) 2015-2016 Interim Session. 2) Bill Draft Requests (2). 3) Bill Draft Request Direction.

Ms. Lee highlighted the following: 1) There were two new bills introduced by the League of Cities. The first bill would govern the collection of delinquent municipal utility charges. The second bill would govern the distribution of the fuel tax proceeds. 2) State Senator Tick Segerblom had an interesting Bill Draft Request (BDR) which would authorize the governor to enter into compacts with Nevada Indian tribes concerning the regulation of marijuana.

Ms. Lee noted the Board could approve up to two BDRs. If only one BDR was approved, the Board would still have the option to pursue any legislation that might present itself before September 1st. Options included working with the County's Legislators, bill sponsors, and Chairs of Legislative Committees. An additional option would be not to submit any BDRs and pursue opportunities during the session. She added recommendations by the Board would also be an option.

Commissioner Berkbigler believed it was important to keep a close eye on issues going on in Las Vegas. There was an ongoing challenge between Clark County and the City of Las Vegas as to whether or not they should be merged, which could potentially impact Washoe County. She moved for the Board to approve at least one BDR in order to start gathering the information needed regarding the changes the Board wanted to see in regards to the Regional Governing Board.

Chair Jung thought Clark County Commission's BDR to provide property owners more power to avoid being annexed barely touched the issue regarding the arms race between cities versus counties. She mentioned the sprawl by cities took away the dedicated fire resources from the counties. She requested language regarding the County's concerns to be included. She added the issue needed to be worked out with the cities since they view it as a revenue source as well.

Commissioner Berkbigler said the Board did not have to have the total outline for the BDR as opposed to simply choosing a topic. She again proposed to submit one BDR which proposed specific changes to the Regional Governing Board.

Kevin Schiller stated if the Board gave direction specific to what it wanted to utilize one of the County's BDRs for, staff would move forward on the proposal and the language for a final submission.

Commissioner Lucey asked for clarification as to whether the Board would lose the second BDR if it only utilized one of them.

Ms. Lee explained the Board had an option to submit up to two BDRs, which was the number allotted to the County. If the Board were to utilize one of the BDRs, it would not lose the second BDR. She added for future sessions, the Board would always have two BDRs unless the statute was changed. She said by utilizing only one BDR, the second BDR went away in the sense that the County could not submit a second BDR as a sponsor. She continued by stating it did not mean the County could not pursue a different legislative topic. The BDR deadline was set for September 1st; however, if specific topics came up, the County could work with its Legislators, Chairs of Legislative Committees, or bill sponsors to look at opportunities to address them during the next session.

Commissioner Lucey inquired whether the timeline for BDR presentations had been moved up from the end of the year to November 15th.

Ms. Lee replied local governments had a statutory deadline of December 1st for pre-filing their bills. She believed the date was changed to November 16th. She noted the County had to submit the full language in the Bill to the Legislative Counsel Bureau (LCB) for them to publish it by the deadline.

Commissioner Lucey thought the County needed to focus on one Bill due to the shorter time constraint regarding getting the full language to the LCB with enough time to properly vet it.

Paul Lipparelli, Legal Counsel, explained the Board could take action to direct staff to prepare a draft or an outline of what the Bill might look like and then bring it back to the Board for a vote to actually submit the Bill at a later time.

Chair Jung remarked the Board would not be meeting before the BDR had to be submitted.

Mr. Lipparelli noted staff could do its best when it made the submission. The Board item on the Agenda did the best job it could to describe what kinds of things the Board might have to do in managing the Legislative agenda. He added it was not always possible to know when the Board was going to need to make a decision. The item was as broad as it could be but at most it allowed the Board to direct staff. He said the Board could vote on an amended motion to direct staff to prepare items for the Legislature.

Commissioner Berkbigler clarified that the purpose of her original motion was to direct staff to prepare one BDR to address the issue of changes to the Regional Governing Board with the understanding the County did not know what all those changes would be and for staff to work on drafting the language to bring back before the Board.

Commissioner Lucey stated he agreed.

After the motion, Commissioner Berkbigler stated there would be a number of BDRs introduced at the Legislature and not all of them would necessarily go anywhere; however, once the BDRs were introduced and just sitting there with no activity, there would be an ability to do what was called “jack up the title” and stick a new Bill underneath an existing BDR.

On motion by Commissioner Berkbigler, seconded by Commissioner Lucey, which motion duly carried with Commissioners Hartung and Herman voting “no”, it was ordered that staff be directed to prepare one Bill Draft Request addressing the changes to the Regional Governing Board and for staff to draft language which would be brought back before the Board.

16-0760 **AGENDA ITEM 16** Update and possible direction to staff on the Washoe County Economic Development and Conservation Act. (Washoe County Federal Lands Bill). Manager. (All Commission Districts.)

Kevin Schiller, Assistant County Manager, highlighted the following: 1) Staff continued to work on draft language and on mapping. 2) A webpage dedicated to the Bill was up. The webpage illustrated mapping with explanations. 3) Bill Whitney, Planning and Development Director, reached out to the Cities of Reno and Sparks and met with their Community Services Departments concerned with the mapping to gather their input. 4) In order to gather stakeholder and jurisdictional feedback, open houses were scheduled on September 16th from 1:00 p.m. to 3:00 p.m. and on September 19th from 4:00 p.m. to 6:30 p.m. Maps would be displayed in the atrium, and staff would answer questions and elicit feedback in order to ensure a transparent process. 5) The Regional Governing Board scheduled a special meeting to discuss the topic on August 29th. 6) The issue would be a standing item on all Board agendas moving forward until its conclusion.

On the call for public comment, Cathy Brandhorst spoke about matters of concern to herself.

There was no motion made on this item.

16-0761 **AGENDA ITEM 18** Second reading and adoption of an ordinance amending Washoe County Code Chapter 55 by adding provisions creating the Animal Services Advisory Board; specifying the board’s purpose and duties; and specifying the composition of the board, appointment of members, terms of service, officers, meetings, compensation and removal, and other matters properly relating thereto. (Bill No. 1769). Animal Services. (All Commission Districts.)

The Chair opened the public hearing by calling on anyone wishing to speak for or against adoption of said Ordinance.

On the call for public comment, Cathy Brandhorst spoke about matters of concern to herself.

Jan Galassini, Chief Deputy County Clerk, read the title for Ordinance No. 1585, Bill No. 1769.

Commissioner Hartung addressed a comment made by a citizen who said no one on the Sparks City Counsel knew about the Animal Services Advisory Board. He stated he had multiple conversations with the City of Sparks councilmembers and they were in favor of the Advisory Board’s make up.

On motion by Commissioner Hartung, seconded by Commissioner Lucey, which motion duly carried with Commissioner Herman voting “no”, Chair Jung ordered

that Ordinance No. 1585, Bill No. 1769, be adopted, approved and published in accordance with NRS 244.100.

16-0762 **AGENDA ITEM 22** Announcements/Reports.

Chair Jung requested for staff to provide Elise Weatherly with information regarding grandparent's rights and information regarding who was in charge of the Jan Evans Juvenile Justice Center. She reported she and Commissioner Lucey participated in a fundraiser at High Sierra Industries for people suffering from major disabilities. She also reported she was the master of ceremonies at the Old-Fashioned Democratic Picnic which was sponsored by the Democratic Women of Washoe County and the Nevada Young Democrats. She mentioned a Save Our Schools fundraising event. She said she would be serving as a surrogate for former Secretary of State Hillary Clinton at a business roundtable to explain Secretary Clinton's plan for small business owners. She added former Nevada Attorney General Catherine Cortez Masto would be in attendance at the business roundtable event. She noted there would be a District Board of Health Meeting; as well as, several meetings for the City of Reno's Downtown Action Plan and Operation Rescue. She reminded the Board of the Annual Lake Tahoe Summit. Lastly, she said the state of the County address would take place on September 1, 2016 at Bartley Ranch.

3:58 p.m. The Board recessed.

4:00 p.m. The Board reconvened with all members present.

16-0763 **AGENDA ITEM 19** Hearing, discussion, and possible action to determine whether there is just cause to remove Thomas G. Daly from the Washoe County Planning Commission pursuant to NRS 278.040 and Washoe County Development Code section 110.912.05(f) for Mr. Daly's actions involving Colina Rosa subdivision in April and May of 2016. The determination of just cause will be based on alleged violations of Washoe County Planning Commission Rule 1.04 and Due Process. If just cause is found, the County Commission may take possible action to remove Thomas G. Daly from the Washoe County Planning Commission.

Bob Webb, Community Services Department Planning Manager, stated the Board had a very extensive staff report on the matter. He noted staff received correspondence from Mark Gunderson, Esquire, who was representing Planning Commissioner Thomas Daly, on Friday, August 19, 2016. A copy of the letter was provided to the Board and was part of the public record. The two topics in the alleged violations which formed the basis for the possible action to remove Mr. Daly from the Planning Commission were outlined in a notice to Mr. Daly. The two topics of alleged violations were: 1) Mr. Daly violated Rule 1.04(a)(ii)(d) from the Planning Commission's Rules, Policies and Procedures. He explained the rule pertained to adjudicative matters of which the proposed subdivision known as Colina Rosa was classified. The rule had two components. First it charged planning commissioners to keep

an open mind. Second, the rule required planning commissioners to “not form or communicate any preferences or thoughts that might be perceived as prehearing bias.” Secondly, Mr. Daly was advised and admonished on three separate occasions that his written comments in an opinion editorial (op-ed) letter to the Reno Gazette-Journal, published on April 19, 2016 in advanced of the scheduled May 3, 2016 Planning Commission Public Hearing on the Colina Rosa case violated both the applicant’s rights to an impartial hearing before the Planning Commission and the rule.

Jan Galassini, Chief Deputy County Clerk, noted there was a packet distributed to each Commissioner which would be placed on file with the Clerk.

On the call for public comment, Cathy Brandhorst spoke about matters of concern to herself.

Roger Edwards said he was impressed with Mr. Daly’s work. He stated Mr. Daly made a mistake regarding the newspaper article; however, he was only defending his neighborhood. He added if every mistake and choice was going to end up before the Board with a termination option, the Board might as well do away with the Planning Commission. He said there were other ways to reprimand Mr. Daly.

Jeff Church said the Board stripped Mr. Daly of his First Amendment right. He mentioned Chair Jung’s comments about Save Our Schools and Hillary Clinton showed bias. He stated the Board could censure Mr. Daly but it would be inappropriate to remove him from the Planning Commission.

Diana Langs stated when the Board appointed the Planning Commission members it gave those individuals a jurisdictional area. The citizens of that area could voice their concerns, which was what Mr. Daly had done. She urged the Board to rule in favor of the neighborhood.

Tom Motherway said the reason for the hearing was due Mr. Daly’s refusal of the staff attorney’s advice to recuse himself from a second hearing. He mentioned Mr. Daly took a position which he held throughout the process. He added recusal was a voluntary act on the part of the official where there was a real or perceived conflict of interest. He believed there was no conflict of interest. He noted Mr. Daly was well-supported and he asked the Board to terminate the hearing.

William Sanchez spoke in favor of Mr. Daly’s continuance on the Planning Commission. He said if it was not for Mr. Daly he would not have received any information on the subdivision. He remarked Mr. Daly voiced the opinions of the neighbors in the district. He asked the Board to consider dismissing the hearing.

Cliff Low hoped the Board would take the time to read the numerous emails submitted by individuals who supported Mr. Daly. He said he looked at the opinion editorial and there was nothing in it that warranted the hearing. He encouraged

the Board to take no action. He stated any action could possibly discourage people from coming forward when the Board solicited applicants for various appointments.

Paul Lipparelli, Legal Counsel, explained that he and Nathan Edwards, Deputy District Attorney, would attempt to play different roles. He informed the Board Mr. Edwards would outline the legal standards from the Planning Department and County Management's perspective, while he would be available to advise the Board on possible questions they may have, their options or the decision.

Mr. Edwards explained the importance of due process as it related to liberty. He quoted Daniel Webster who said of due process, "a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial." The meaning was that every citizen would hold his life, liberty, property and immunities under the protection of the general rules that governed society. He quoted another description of due process by stating, "The guaranty of due process of law is one of the most important to be found in the Federal Constitution or any of the Amendments... It has been described as the very essence of a scheme of ordered justice... and it has been said that without it the right to private property could not be said to exist, in the sense in which it is known to our laws." He asked the Board to imagine a system without fairness, where the outcomes were fixed, or where decision makers failed to discharge their duties impartially. The protections of due process stood against that and guarded against those evils. One of the rules of due process was that people were entitled to hearings presided over by impartial decision makers. The rule extended not only to the courts but to administrative tribunals conducting adjudicatory matters. The Planning Commission was an administrative tribunal and it conducted adjudicative proceedings. Planning Commissioners were required to conduct themselves impartially in Planning Commission hearings, which meant they had to keep an open mind until the hearing was over and it also meant they had to avoid prehearing bias. He noted Mr. Daly's actions fell short of due process requirements. He said over the course of two hearing dates in April and May of 2016, the Planning Commission ruled on the Colina Rosa project. At the conclusion of the April 5th hearing date, the first of the two hearings, no action was taken by the Planning Commission and Mr. Daly announced his opposition to the project; as well as, his reasons and moved for a continuance. The hearing was continued to May 3rd. Prior to the May 3rd hearing date, the Reno Gazette-Journal published an op-ed authored by Mr. Daly in which he condemned the project, detailed his reasons why he opposed the subdivision and announced he would vote against it. County staff was alarmed by Mr. Daly's actions and held a meeting with him before the second hearing date in which he was admonished. Mr. Daly was also informed he would be required to recuse himself and that he would be disqualified from participating. He remarked staff explained the reasons, including the Planning Commission rule which had been previously cited to the Board. He pointed out a case in the staff report called *Nasha LLC v the City of Los Angeles*. In that case, which was remarkably similar, a Planning Commissioner had opposed a development of homes in a scenic corridor and that Planning Commissioner prepared an article or op-ed opposing the project, which was published in a local newspaper or new publication. The project was denied and a challenge was brought in court. The court threw out the denial by stating that the Planning Commissioner should have recused

himself and that the Planning Commissioner violated the due process rights of the developer. In addition to the Nasha LLC case, he noted Rule 1.04, the Planning Commission's Rules, Policies and Procedures. The relevant portion of that rule stated, "Commissioners must keep an open mind and not form or communicate any preferences or thoughts that may be perceived as prehearing bias." He added those same rules had been provided to Mr. Daly in connection with his orientation within a year prior to the proceedings of the Colina Rosa project. He noted the rule had two components, communication indicating prehearing bias should be avoided and commissioners were required to keep an open mind. He gave a recount of the events between the April and May meetings, including his advice to Mr. Daly to recuse himself, which Mr. Daly decided not to take. He stated Mr. Daly offered three points in his defense: 1) He argued the Planning Commission rules were not violated because his op-ed was published mid-hearing and not prehearing. 2) He argued that his op-ed was not problematic because it simply reiterated the essence of what he already said at the April 5th meeting. 3) He argued there was no due process problem because the applicants got what they wanted in the approval of their project. He said all three of Mr. Daly's defenses were hyper-technical and missed the point. He provided a rebuttal to each of Mr. Daly's defenses. He added there was an enormous difference between speaking extemporaneously on an item from the dais in the middle of a public hearing and writing an op-ed weeks later to broadcast a personal opposition to the entire community in an attempt to generate additional opposition to a particular project before the hearing. He continued by saying it was not a Planning Commissioner's job to go out into the public court of opinion and attempt to stir up opposition to projects. A Planning Commissioner's job was to attend meetings, listen to the evidence presented, apply the evidence against the findings required in the Development Code and state law, and render a decision by voting to approve or deny a project. He contended Mr. Daly's actions were a far cry from a Planning Commissioner's job duties. He mentioned the real issue was whether Mr. Daly violated due process requirements regardless of the outcome of the proceedings. He said Mr. Daly failed to hear before he condemned, he failed to proceed upon inquiry, and he failed to render judgment only after trial. He informed the Board the decision before them was to decide whether or not what happened equated or arose to the level of just cause for removal. He closed by stating it was the position of the District Attorney's Office that it did based on the arguments he provided.

Commissioner Berkgigler asked Mr. Edwards to address whether Mr. Daly's First Amendment right to speak his piece was violated.

Mr. Edwards replied that argument was clearly wrong. He gave an example of a legal matter involving a Sparks Councilmember, Mike Carrigan, who was cited for an ethics violation. He explained Mr. Carrigan claimed the rule requiring his recusal in a certain case violated his First Amendment rights. The Nevada Supreme Court agreed with Mr. Carrigan and ruled in his favor; however, the United States Supreme Court took the case up on certiorari and ruled against the Nevada Supreme Court. The United States Supreme Court concluded there was no First Amendment right of the councilmember to participate in the proceedings. He reiterated the fact that after writing the op-ed, Mr. Daly failed to recuse or disqualify himself. He mentioned simply writing

the op-ed was Mr. Daly's own business; however, it raised other legal issues given his role as a Planning Commissioner with respect to participating in a pending proceeding before the Planning Commission. He noted there was clearly no First Amendment right on the part of a Planning Commissioner to participate in those proceedings per the Carrigan case.

Chair Jung sought clarification as to whether the Board had the statutory right to sanction or censure Mr. Daly.

Mr. Edwards stated it was his opinion that removal or retention were the only options. He noted another case in which a removal proceeding resulted in a censure; however, the censure was overturned by a Court because the Court essentially said the only options were to remove or not to remove.

Chair Jung asked if Planning Commissioners had jurisdictional areas and whether they had constituents.

Mr. Edwards replied Planning Commissioners were appointed out of different areas within the community so his opinion was no. Planning Commissioners simply represented the Planning Commission. He also opined Planning Commissioners did not have constituents.

Commissioner Lucey asked if the issue had nothing to do with the outcome of the project itself, but was purely a matter of process.

Mr. Edwards responded affirming Commissioner Lucey's question.

Commissioner Lucey inquired if Mr. Daly was given the rules of conduct for a Planning Commissioner when he was appointed.

Mr. Edwards responded in the affirmative. He noted it was standard practice to provide the rules of conduct. He continued by stating Planning Commissioners were provided with the rules related to the Open Meeting Law, the ethics chapter, the findings; as well as, other issues.

Commissioner Lucey asked whether Mr. Daly was taken through the process of the Opening Meeting Law.

Mr. Edwards replied yes.

Commissioner Lucey inquired as to how long the training was.

Mr. Webb stated the training was usually between two to three hours depending on the questions received from the Planning Commissioners. He noted legal staff covered the items Mr. Edwards laid out.

Commissioner Lucey sought confirmation of his understanding that a big portion of the training process involved the discussion of the Open Meeting Law and due process.

Mr. Webb replied that was correct. He remarked Mr. Edwards, as the Planning Commission's counsel, covered two key aspects, the Open Meeting Law and ethics, which took up about half of the orientation time.

Chair Jung asked whether the Board and the Planning Commission had different rules when it came to prejudging or due process.

Mr. Edwards responded there were different rules. He said the distinction, regardless of the public body, came down to whether an item was legislative or adjudicative. Adjudicative meant it was like a court proceeding. Legislative was when the Board considered the adoption of a new Ordinance or an amendment to an Ordinance. In adjudicative matters before any administrative tribunal, everyone had the same due process rights. It did not matter whether it was the Board or the Planning Commission.

Mark Gunderson, Esquire, on behalf of Mr. Daly, stated the real issue was whether there was just cause for the removal of Mr. Daly from the Planning Commission. He said there were no facts available that justified termination of Mr. Daly's service. He noted the County's rules stated just cause could be one of three things. 1) Inefficiency. 2) Neglect of Duty. 3) Malfeasance. He insisted none of those existed. He mentioned the case of *Jones v. Eight Judicial District Court of the State of Nevada*, a 1950 decision where a judge was removed in Las Vegas. The Court in that case said when there was a claim of malfeasance, that was a heightened inquiry, and a very serious claim of misconduct. He added the Nevada Supreme Court defined malfeasance as the result of an act of willful conduct, corrupt motives, conscious wrongs, evil purpose, bad purpose, intent to defraud, corruption, evil intent or motive which must appear clearly on the record. He stated misjudgment was not malfeasance. He provided an overview of the events and explained the application which was presented by the applicant at the second hearing was not the same application presented at the initial meeting. He said Mr. Daly did not prejudge or say he was going to vote the project down, but rather he asked for time to look at the applicant's application. If time was not provided to review the application, then he would vote no. He continued to say Mr. Daly did not vote no out of bias and in Mr. Daly's op-ed, he said he would support residential development; however, the applicant's plan for excessive density was unacceptable as it lacked an appreciation for the scenic core, and did not address traffic and fire issues. He added the applicant regrouped after receiving feedback and made changes to their application based on the comments. He stated there was no question procedural due process was followed and substantive due process was satisfied. He remarked the applicant received a fair hearing. He concluded Mr. Daly's stated intentions in the op-ed only dealt with the first hearing.

Commissioner Berkbigler inquired whether Mr. Gunderson's position was that Mr. Daly's actions were a misjudgment.

Mr. Gunderson replied in order to find malfeasance the Board had to find more than misjudgment. He said the Board might question Mr. Daly's judgment, but it did not rise to the level as defined by the Nevada Supreme Court in the Jones case.

Chair Jung asked which Planning Commissioner moved for a continuance.

Mr. Gunderson replied Mr. Daly.

Chair Jung inquired whether Mr. Daly announced his opposition at the initial meeting.

Mr. Gunderson replied Mr. Daly moved to continue the hearing in order to give the applicant an opportunity to provide more information.

Chair Jung sought clarification as to whether Mr. Daly wrote the op-ed in between the two hearings.

Mr. Gunderson responded in the affirmative. He added there was a different application and a new set of facts at the second hearing.

Chair Jung asserted the only reason the application was changed by the applicant was due to Mr. Daly's opposition and request for continuance. She expressed her concern that Mr. Daly had not acknowledged his fault. She stated the County had a liability as well. The County insured the Planning Commission's actions.

Mr. Gunderson stated his job was to be an advocate for Mr. Daly and he indicated the Board would hear from Mr. Daly.

Mr. Daly, District 2 Planning Commissioner, requested that his written statement be included in the record. He read the statement which highlighted the events leading to the hearing. The statement was placed on file with the Clerk.

Commissioner Herman thanked Mr. Daly for his passion and strength. She felt he had been misunderstood.

Commissioner Lucey asked Mr. Daly what the intent and the reasoning was for him to author the op-ed in between the two hearings.

Mr. Daly replied the op-ed was meant to notify the effected community.

Commissioner Lucey asked why Mr. Daly gave the extra commentary within the op-ed in regards to his position or stance on the issue.

Mr. Daly said he was just repeating what was in the meeting minutes.

Commissioner Lucey inquired whether as a Planning Commissioner, Mr. Daly believed there were processes that needed to be set forth by each elected or appointed official, and that inherently they needed to follow those processes set forth based upon a code of conduct and code of ethics.

Mr. Daly stated the Planning Commission had presented unanimous recommendations to the Board that the Board unanimously rejected. He noted as a Planning Commissioner he made policy.

Commissioner Lucey remarked he was not going to dictate to Mr. Daly what the duties or role as a Planning Commissioner should or should not be. He mentioned he had remained unbiased throughout the independent discussions he had with Mr. Daly. He asked Mr. Daly why he did not just respond to the multitude of emails he received versus writing an op-ed for the Reno Gazette-Journal.

Mr. Daly acknowledged he responded to the emails; as well as, wrote the op-ed. He said he realized the Planning Department's staff had limited resources in relation to providing notices. He stated there was insufficient outreach regarding the largest development project on the Mount Rose corridor since he moved to the area in 2006.

Commissioner Lucey asked whether he knew of any Board of County Commission meetings that took place in between April 5th and May 3rd.

Mr. Daly replied he was sure there were.

Commissioner Lucey asked Mr. Daly why he did not approach the Board or contact him directly when he felt there was not adequate notification.

Mr. Daly responded that the inquiries came to him close to the end of the month prior to the May meeting. He thought he wrote the op-ed on April 24th.

Commissioner Lucey asked whether Mr. Daly had direct contact with him.

Mr. Daly said he and Commissioner Lucey spoke all the time.

Commissioner Berkbigler inquired whether Mr. Daly understood that a recusal from a vote was also considered a no vote.

Mr. Daly replied it would not have been a yes vote.

Commissioner Berkbigler stated it was the responsibility of the Board and various Commissions to take legal advice from the District Attorney's Office. She asked why he did not take the advice from the Planning Commission's staff attorney to recuse himself.

Mr. Daly replied the final decision on recusal was his and not the attorney's.

Commissioner Berkbigler acknowledged Mr. Daly could not be forced to recuse himself; however, he was receiving advice from the Deputy District Attorney whose job it was to look at the regulations, the rules and the law as it related to the business of the County. She noted the Deputy District Attorney's advice was for him to recuse himself. She affirmed as a Planning Commissioner, Mr. Daly had a responsibility to the County and should have followed the terms and dictates of the Deputy District Attorney rather than his own personal opinion.

Mr. Daly said his other balancing concern was disenfranchising his constituents who did not get to vote. He added his feelings at the May 3rd meeting were not as strong as they were at the April 5th meeting because there were a lot of positive changes. He said he was not putting forth his personal opinion and that he represented a district that was loud, clear and unequivocal.

Mr. Lipparelli asked Trevor Lloyd, Community Services Department Senior Planner, if he could confirm for the Board that the proper legal notices for the hearings on the Colina Rosa project were given.

Mr. Lloyd replied all legal requirements for noticing were met. The County even sent out a courtesy notice, that was not required or mandated by Code or state law, prior to the February Citizen Advisory Board (CAB) meeting.

Mr. Lipparelli noted there were comments made regarding the changes that were made to the project between the April 5th and May 3rd hearings. He inquired what those changes were and who made the changes.

Mr. Lloyd replied there were very few changes made between the April hearing and the May hearing. He said staff recommended one condition be amended during the first hearing and that was for the deceleration lane. It was a condition that was proposed. He added staff strengthened the condition at the request of Mr. Daly and the Planning Commission. The second imposed change requested by staff was to include language allowing for a free right turn lane at Edmonton Drive and Butch Cassidy Drive. This was one of the recommendations as part of the original traffic analysis. There were no changes to the design or to the application. There was only one added condition and one amended condition as part of the hearing.

Mr. Lipparelli asked whether the applicant agreed to the changes and if the changes part of the final vote.

Mr. Lloyd replied yes to both inquiries. He said there was one change that was made during the hearing that came about during discussion from the Planning Commission and that was to change the set-backs, which was never proposed by the applicant or by staff.

Mr. Lipparelli stated it had not been an easy thing for the District Attorney's Office to give advice on the matter. He said the meeting between Mr. Daly, Mr. Edwards, Mr. Whitney and himself was held in private because of concerns that arose from outside statements and the op-ed. He added staff wanted to give Mr. Daly advice privately so that he would have a chance to consider it. The meeting was difficult and it took almost two months from the time of the Planning Commission meeting on May 3rd until County Management made a decision to give Mr. Daly notice of the just cause for removal. He noted after a Planning Commissioner was appointed, that person could not be removed by the Board for just any reason. The removal statute for Planning Commissioners was Nevada Revised Statute (NRS) 278.040 which indicated a Planning Commissioner could be removed for just cause. He said there was a section of the County Code which addressed just cause for employees; however, it did not apply directly to Planning Commissioners. It was noted in the staff report because it was the only County definition of just cause. He explained the difference between legislative and adjudicative roles. He stated the concern regarding the op-ed statement, which indicated Mr. Daly's mind was made up on the project, was that it cut off due process. It did not allow for the process to continue as the statements had been made. The hearing was in two parts and it was not over until it was over, so comments in between hearings would be the equivalent of a judge stepping out in the middle of a trial to give a newspaper interview about what their thoughts were about the matter. He said that behavior was very alarming. He noted the California case which had similar facts that lead to a court striking down a decision of a Planning Commission for the very same issues. Staff wanted Mr. Daly to understand the seriousness of his actions and why those actions placed the County in a perilous legal position. At the time, nobody knew what the outcome of the Planning Commission's decision was going to be. He stated had Mr. Daly's considerable intellect and powers of persuasion caused his colleagues to vote the project down, the applicant would have had a custom-made lawsuit. The fact the applicant did not sue because they got most of what they wanted did not mean the County should not take a serious look at the foul staff thought was committed. He added if Planning Commissioners could say whatever they wanted in public before a meeting was concluded and before a decision point was reached, the County would lose the ability to assure people who came to the meetings that a decision was going to be made based on what was represented on the record. He explained the decision the Planning Commission was making at the hearings was on a tentative map. At that point density issues were not considered. In Mr. Daly's op-ed he referred to the project as a high density project and said the planned excessive density was unacceptable. He asserted that was the point when staff concluded they had to meet with Mr. Daly and ask him to recuse himself. If he had recused himself on the advice of legal counsel then the vote on the Planning Commission would be adjusted to reflect his abstention for an ethical reason. He provided his closing argument by stating neither Mr. Edwards nor himself expect elected officials or other County clients of theirs to take their advice word-for-word. As advisors, they did their best to try to say what they thought the law was. He continued by saying the California case and the other cases on due process caused staff to inform Mr. Daly that his actions were very concerning and it could potentially place the County in an untenable legal position. The County would have no defense to the claims due process was violated. Since Mr. Daly chose not to take the

advice of counsel, his actions placed the County in legal jeopardy. No other Planning Commissioner to his knowledge had taken these actions before; therefore, there had never been an attempt to remove a Planning Commissioner. He remarked as Mr. Edwards said it was not that Mr. Daly voted no, but as an adjudicative board member he could not make up his mind before the process was over. If the Board found just cause, then they were justified in removing him. If the Board did not find just cause, he advised the Board not to take any action since there was no lesser offense. The Board could not censure, reprimand or suspend Mr. Daly. It was either removal or Mr. Daly would stay on the Planning Commission. Either decision would have legal consequences on their own which he said he would handle.

Commissioner Hartung noted the Commissioners had been lobbied by various people who wanted to know where they stood and tried to sway their vote so they could potentially know how the Board was going to act. He said the distinction for him was that there were comments made during an open meeting which were reiterated in an op-ed. He stated he did not agree with what Mr. Daly did but he was not sure he found the action mortal. He thought the Board's action could potentially set a precedent.

Commissioner Lucey stated the roles of the Board and the Planning Commission were very complex. He said the roles were not specifically legislative or adjudicative but both. In that role, a person had to maintain a level of impartiality. Advocacy was much different than impartiality. He noted the Board witnessed a level of advocacy in Mr. Daly's case. He remarked Mr. Daly had the best of intentions; however, the law was the law. The Board and the Planning Commission were bound by rules. When a person stepped into that role, especially as an adjudicative member of a board, that person needed to have an unbiased step as they walked through the process. He said he did not feel Mr. Daly remained unbiased. He asserted there were a multitude of options presented to Mr. Daly to work through the process and he chose the option of an op-ed which was wrong. He thought the points made had been very clear.

Chair Jung believed there was just cause because due process was not followed. She said there was a clear demonstration that Mr. Daly did not have an open mind and he formulated or communicated his preference to convey a prehearing bias. She believed Mr. Daly needed to be removed from the position, especially since more development was coming into the unincorporated County.

After the motion, Commissioner Berkgigler thought the County was exposed from both sides which worried her. She said she supported the motion because it was Commissioner Lucey's appointee to the Planning Commission, and she believed Commissioner Lucey and the District Attorney made their case.

On motion by Commissioner Lucey, seconded by Commissioner Berkgigler, which motion duly carried with Commissioners Hartung and Herman voting "no", it was ordered that Thomas G. Daly be removed from the Planning Commission based upon the evidence presented.

16-0764 **AGENDA ITEM 20** Possible Closed Session for the purpose of discussing labor negotiations with Washoe County, Truckee Meadows Fire Protection District and/or Sierra Fire Protection District per NRS 288.220.

There was no closed session.

16-0765 **AGENDA ITEM 21** Public Comment.

Cathy Brandhorst spoke about matters of concern to herself.

5:33 p.m. Commissioner Lucey left the meeting.

Jeff Church expressed his concerns with the Washoe County School District's (WCSD) unilateral decisions regarding its Oversight and Protection Committees. He spoke about WCSD's potential violations and urged the Board not to allow the WCSD to dictate who served on those committees. He wanted the committees to meet and do their jobs.

Cliff Low believed the Board should hold a hearing for Planning Commissioner Greg Prough since he also voted no and expressed negative opinions towards the Colina Rosa subdivision. He asked what the difference was between what Planning Commissioner Prough and Planning Commissioner Daly did. He thought Planning Commissioner Daly provided a service to the residents with his opinion editorial and did not show prehearing prejudice.

COMMUNICATIONS AND REPORTS

The following communications and reports were received, duly noted, and ordered placed on file with the Clerk:

COMMUNICATIONS:

16-0766 Cooperative Agreement between the State of Nevada, Department of Transportation and Washoe County Community Services Department for pedestrian improvements, including sidewalk, curb and gutter, handicap ramps at various Washoe County school locations. (Minute Item No. 15-0165 from the Board of County Commissioner's meeting of February 24, 2015.)

MONTHLY FINANCIAL STATEMENTS:

16-0767 Monthly Statement of the Washoe County Treasurer for month ending June 30, 2016.

QUARTERLY FINANCIAL STATEMENTS

16-0768 Quarterly Financial Statement of the Clerk of the Court for quarter ending June 2016.

16-0769 Quarterly Financial Statement of the County Clerk - FY 2015/2016 for quarter April 1 through June 30, 2016.

TENTATIVE BUDGETS / FINAL BUDGETS

16-0770 Sun Valley General Improvement District's budget for fiscal year 2016-2017.

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5:41 p.m. There being no further business to discuss, the meeting was adjourned without objection.

KITTY K. JUNG, Chair
Washoe County Commission

ATTEST:

NANCY PARENT, County Clerk and
Clerk of the Board of County Commissioners

*Minutes Prepared by:
Michael Siva, Deputy County Clerk*